



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201234034

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAY 29 2012

U.I.L. 402.08-00

T:EP:RA:T3

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XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX  
Plan X = XXXXXXXXXXXXXXXXXXXX  
Company E = XXXXXXXXXXXXXXXXXXXX  
Amount D = XXXXXXXXXXXXXXXXXXXX  
Date 1 = XXXXXXXXXXXXXXXXXXXX  
Date 2 = XXXXXXXXXXXXXXXXXXXX  
Date 3 = XXXXXXXXXXXXXXXXXXXX  
State S = XXXXXXXXXXXXXXXXXXXX  
State T = XXXXXXXXXXXXXXXXXXXX

Dear xxxxx:

This is in response to your request dated xxxxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxxxx, and xxxxxxxxxxxx, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 45, represents that he received a distribution from Plan X totaling Amount D on Date 1. Taxpayer A asserts that his failure to accomplish

rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to his lack of knowledge of the 60-day rollover requirement and his adjustment to life in State T.

On Date 1, Taxpayer A, who had terminated employment of Company E, requested a distribution from Plan X of Company E's retirement plan. During the 60-day period, following Date 1, on Date 2, Taxpayer A moved from State S to State T because the weather in State S affected the health of his wife and children. Taxpayer A asserts that he had a lot of things to do to adjust to life in State T and that he did not know that he had the option to rollover the distribution to another qualified retirement account until Date 3 when he met his tax preparer.

Taxpayer A represents that he did not read the documents provided to him by Company E in connection with the distribution of Amount D and that they were lost in the mail. Amount D remains in Taxpayer A's checking account.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60-day rollover requirement with respect to the distribution of Amount D.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be included in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check,

whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer A has not presented any evidence to the Service which shows that he had the intent to roll over the distribution of Amount D. Further, Taxpayer A has not provided any documentation to show that his inability to rollover Amount D within the 60-day rollover period contained in section 402(c)(3)(B) of the Code was affected by any of the factors described in Rev. Proc. 2003-16. Therefore, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount D.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxxxxx, SE:T:EP:RA:T3, at xxxxxxxxxxxxxxxxx.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of letter ruling  
Notice of Intention to Disclose